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2014 APR 15 PM 4: 54

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6752

DATE COMPLAINT FILED: 8/23/13

DATE OF NOTIFICATION: 8/30/13

LAST RESPONSE RECEIVED: 9/19/2013

DATE ACTIVATED: 1/15/14

EXPIRATION OF SOL: 8/19/18

ELECTION CYCLE: 2014

COMPLAINANT:

Timothy Urling

RESPONDENTS:

Simpson for Congress and T. Layne Van Orden
in his official capacity as treasurer
Idaho Association of REALTORS®, Inc.

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(8)(B)(vi)

2 U.S.C. § 431(9)(B)(v)

2 U.S.C. § 441b(a)

11 C.F.R. § 114.2

11 C.F.R. § 114.2(f)

11 C.F.R. § 114.3(a)(1)

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant alleges that the Idaho Association of REALTORS® ("IAR") and Simpson for Congress and T. Layne Van Orden in his official capacity as treasurer (the "Committee") violated 11 C.F.R. § 114.2 when IAR used its corporate name and logo on an invitation to an August 2013 fundraiser for Representative Mike Simpson. IAR and the Committee each argue that IAR did not make a corporate contribution to Simpson because IAR did not distribute the invitation beyond its restricted class. Nevertheless, the Committee

1 states that it distributed the invitation to "tens of thousands of people, associations, and
2 organizations" but asserts that such distribution was "all within the boundaries of the law."
3 Committee Resp. at 1.

4 Based on the available information, we recommend that the Commission dismiss, as a
5 matter of prosecutorial discretion, the allegation that IAR made and facilitated the making of
6 impermissible corporate contributions to Representative Simpson, but caution IAR and the
7 Committee regarding the legal restrictions on invitations containing IAR's corporate name
8 and logo that may have been distributed beyond IAR's restricted class.

9 II. FACTS

10 IAR is a non-profit corporation that functions as a professional trade organization for
11 Idaho realtors. <http://www.idahorealtors.com/About.aspx>. IAR has a state political action
12 committee that files disclosure reports with Idaho Secretary of State.
13 <http://www.sos.idaho.gov/elect/Finance/2014/2013Annual/PAC/RealtorsPAC.pdf>.

14 Congressman Mike Simpson represents Idaho's 2nd Congressional District and is a
15 candidate for re-election in 2014. The Committee is Simpson's authorized campaign
16 committee and T. Layne Van Orden is the Committee's treasurer.

17 On August 26, 2013, the Committee and IAR co-sponsored a luncheon fundraiser at
18 the Boise Centre on the Grove to support Simpson's re-election.¹ The Committee paid for and
19 printed the invitation to the fundraiser. Committee Resp. at 1. IAR's name and logo appear at
20 the top of the invitation, which states "Congressman Mike Simpson and the Idaho Association
21 of REALTORS® invite you to a special visit with Speaker John Boehner." Compl. at 1. The
22 invitation requests a contribution of \$50 per person made payable to "Simpson for Congress"

¹ Although IAR is listed as a co-sponsor of the fundraiser, we have no information indicating that IAR made any in-kind contribution to the Committee by sharing the costs for the event.

1 and asks that contributors reply to the Committee at its e-mail address or telephone number as
2 provided. *Id.*, Attach. The invitation also includes a disclaimer stating, among other things,
3 that the Committee paid for the invitation and that corporate contributions are prohibited. *Id.*

4 The available information does not establish how many individuals attended the
5 fundraiser, how much money was raised at the fundraiser, or the complete costs of the
6 fundraiser.² The Committee disclosed un-itemized receipts of \$18,485.00 for the period from
7 July 1 to September 30, 2013, some or all of which may be receipts from the fundraiser. *See*
8 FEC Form 3, October 15 Quarterly Report of Receipts and Disbursements at 3 (October 12,
9 2013) ("2013 October Quarterly Report"). The Committee also disclosed disbursements of
10 \$11,427.85 to the Boise Centre on the Grove, where the fundraiser was held. *Id.* at 125. We
11 are unable to discern from the Committee's disclosure report the disbursements that the
12 Committee made to produce and distribute the invitation, or whether there were additional
13 costs for the fundraiser.

14 Complainant alleges that IAR violated 11 C.F.R. § 114.2 by using its logo to facilitate
15 the making of a contribution to the Committee, and the Committee violated 11 C.F.R. § 114.2
16 by knowingly accepting the contributions. Compl. at 1. To support its allegation,
17 Complainant cites Advisory Opinion 2007-10 (Reyes), where the Commission concluded that
18 the use of a corporation's name and logo on an invitation to a fundraiser for a federal
19 candidate constituted prohibited corporate facilitation. Compl. at 1-2. Therefore,
20 Complainant alleges the use of IAR's name and logo on the invitation to the Committee's
21 fundraiser is prohibited. *Id.*

² According to its website, Boise Centre on the Grove offers 50,000 square feet of exhibition/meeting space, including a 25,000 square foot ballroom, an auditorium that has 349 fixed seats, and on-site food service. <http://boisecentre.com/>.

1 IAR asserts that it lawfully distributed the invitation only to its restricted class in
2 accordance with 11 C.F.R. § 114.2(f)(4)(ii). IAR Resp. at 1. IAR provided a notarized
3 affidavit from its government affairs director who "personally directed" the communication,
4 stating that "[t]he invitation I circulated was sent only to the restricted class of my
5 Association." IAR Resp., Attach. IAR argues that the distribution to its restricted class does
6 not constitute unlawful corporate facilitation, and that even if it coordinated with the
7 Committee in producing and distributing the invitation, such coordination does not constitute
8 a prohibited corporate in-kind contribution under 11 C.F.R. § 114.2(c). IAR Resp. at 2.

9 The Committee asserts that it lawfully paid for, printed, and distributed the invitation
10 to "tens of thousands of people, associations, and organizations." Committee Resp. at 1. The
11 Committee did not address the legality of its own distribution of the invitation, and instead
12 focused on the scope of IAR's distribution. *See* Committee Resp.; IAR Resp. The
13 Committee acknowledges asking IAR to distribute the invitation but denies any responsibility
14 for IAR's actions by stating "[t]o the extent that the campaign requested other people [to]
15 further circulate the invitation, we assumed that those entities would do so within the
16 boundaries of the law." *Id.* The Committee asserts that Complainant fails to identify what it
17 did wrong, noting that Complainant does not allege that it controlled or directed IAR's
18 actions, or knew that IAR used corporate resources to distribute the invitation. Committee
19 Resp. at 1. The Committee further asserts that IAR assured it that IAR lawfully sent the
20 invitation only to its "restricted class," but that IAR independently distributed the invitation so
21 it has no knowledge of the specifics of IAR's distribution, and that it did not, or could not,
22 control IAR's actions. *Id.* at 2. Finally, the Committee argues that it did not accept or receive
23 any in-kind contribution that IAR allegedly facilitated by using its corporate resources. *Id.*

III. LEGAL ANALYSIS

Under the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations, corporations are prohibited from making a contribution to a candidate's committee in connection with a Federal election, or facilitating the making of a contribution, and candidates are prohibited from knowingly accepting or receiving such contributions. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1), (f). A "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(8). "Anything of value" includes all in-kind contributions, including the provision of goods or services without charge or at a charge that is less than the usual and normal charge. 11 C.F.R. § 100.52(d)(1). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any federal election. 11 C.F.R. § 114.2(f)(1). A corporation's name, trade name, trademarks, and service marks are things of value owned by the corporation, so the use of a corporation's name or marks by a committee may constitute an impermissible corporate contribution. *See* Factual & Legal Analysis at 7, MUR 6542 (Mullin Plumbing, Inc.); Advisory Op. 2007-10 (Reyes) (corporate names, trademarks, and service marks are corporate resources).

A corporation is permitted, however, to disburse funds for election-related communications to its restricted class, even if the corporation coordinates with a candidate, a candidate's agent, or a candidate's authorized committee. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. § 114.2(c); *see* 11 C.F.R. § 114.3(a)(1) (communication to restricted class "may involve election-related coordination with candidates and political committees"). Thus, costs incurred for any communication by a corporation to its restricted class are not expenditures or

1 in-kind contributions. 2 U.S.C. §§ 431(8)(B)(vi), (9)(B)(v); 11 C.F.R. §100.134(a); *see*
2 11 C.F.R. § 100.81 (payment made or obligation incurred by a corporation is not a
3 contribution, if under the provisions of 11 CFR part 114 such payment or obligation would
4 not constitute an expenditure by the corporation).³ Further, directly soliciting the restricted
5 class for contributions to be sent directly to candidates does not constitute facilitation.
6 11 C.F.R. § 114.2(f)(4)(ii). For the purpose of soliciting contributions to or coordinating
7 communications with federal candidates under 11 C.F.R. § 114.3, the restricted class of an
8 incorporated membership organization, incorporated trade association, incorporated
9 cooperative, or corporation without capital stock is its members and executive or
10 administrative personnel and their families.⁴ 11 C.F.R. § 114.1(j); *see* 11 C.F.R. § 114.8(h)
11 (specifically authorizing trade associations to make communications to its restricted class in
12 connection with federal elections pursuant to 11 C.F.R. § 114.3).

13 The available information indicates that the Committee paid for the invitation. *See*
14 Comm. Resp. at 1 ("the invitation [] was paid for, printed and circulated by the campaign");
15 *see also* Compl., Attach. (invitation disclaimer states "PAID SIMPSON FOR CONGRESS").
16 The invitation, however, includes IAR's name and logo at the top. Based on the Act and the
17 Commission's regulations, such use of IAR's name and logo is permissible if the invitation is
18 soliciting contributions to be sent directly to Simpson and it was distributed only to IAR's
19 restricted class. *See* 11 C.F.R. § 114.2(f)(4)(ii).

³ Corporations are no longer prohibited from using their general treasury funds to finance independent communications that expressly advocate for federal candidates. *See Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876 (2010).

⁴ Executive or administrative personnel means salaried employees who have policymaking, managerial, professional, or supervisory responsibilities. 11 C.F.R. § 114.1(c).

1 While the invitation clearly states that checks should be made payable directly to
2 "Simpson for Congress," the available information appears to show that distribution for the
3 invitation was not limited solely to IAR's restricted class. IAR's response asserts that the
4 invitation was not distributed beyond its restricted class, stating, "[a]s this communication
5 was directed to the restricted class of the Idaho Association of REALTORS® it was clearly
6 not considered corporate facilitation and therefore is not a violation of the Federal Election
7 Campaign Act, (the Act) as amended." IAR Resp. at 2. The Committee, however, appears to
8 indicate that prior to providing the invitation to IAR for distribution, it circulated the
9 invitation on its own. Specifically, the Committee states that "the invitation in question was
10 circulated to tens of thousands of people, associations, and organizations all within the
11 boundaries of the law," and then further explains that "[t]o the extent that the campaign
12 requested *other people further circulate* the invitation, we assumed that those entities would
13 do so within the boundaries of the law." Committee Resp. at 1-2 [emphasis added]. The
14 Committee's response focuses largely on whether IAR's distribution of the invitation was
15 limited to IAR's restricted class without contemplating that any wider distribution on its own
16 part may have resulted in impermissible corporate facilitation.

17 As discussed above, the Commission has concluded that a corporation's name and
18 logo are things of value and that a corporation is prohibited from using those resources to
19 facilitate a contribution. *See, e.g.*, MUR 6542; AO 2007-10. To the extent that the
20 Committee distributed the invitation containing IAR's corporate name and logo to persons
21 outside IAR's restricted class, it appears that IAR may have impermissibly used its resources
22 to facilitate contributions to the Committee, and the Committee may have knowingly received
23 or accepted facilitated contributions.

1 In evaluating whether to pursue enforcement action for the use of a corporation's
2 name and logo, the Commission has examined the potential benefit to the campaign, including
3 the costs of the fundraiser, level of attendance, and amount raised. *See, e.g.*, MUR 6322
4 (Sowers for Congress) (dismissing matter where fundraising event raised only \$5,574);
5 MUR 6110 (Senate Realty Corp.) (dismissing matter with a caution letter where fundraising
6 event had less than 200 attendees and raised only \$13,500). In MUR 6542, the Commission
7 concluded that the value of use of the name and logo of an individually owned corporation
8 was likely *de minimis* where the amount at issue was unknown, but reminded the respondents
9 of the requirements under 2 U.S.C. § 441b(a). F&LA at 7-8, 10, MUR 6542.

10 In this matter, we do not have complete information about the costs of the fundraiser,
11 the level of attendance, or the amount raised. The Committee's 2013 October Quarterly
12 Report shows disbursements of \$11,427.85 to the Boise Centre on the Grove, where the
13 fundraiser was held, but we were unable to identify particular disbursements that may have
14 been made to produce and distribute the invitation. *See supra* p. 3. Further, the report does
15 not specifically show individual receipts from the fundraiser because a \$50 contribution is not
16 required to be itemized — the Committee's unitemized receipts for the three month period
17 that includes the fundraiser date were \$18,485.00.⁵ *Id.* Based on this information, it does not
18 appear that the fundraiser, for which the identifiable costs totaled at least \$11,427.85, resulted
19 in a significant net return for the Committee. Thus, it does not appear that further action by
20 the Commission to investigate additional details of this matter is warranted. *See* F&LA
21 at 7-8, MUR 6542.

⁵ A \$50 contribution from a person other than a political committee is not required to be itemized unless it causes the total contributions to an authorized committee to exceed \$200 during the election cycle. 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.3(a)(4)(i).


Accordingly, we recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation that IAR and the Committee violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2, send IAR and the Committee a letter of caution regarding 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2, and close the file. *See Heckler v. Cheney*, 470 U.S. 821 (1985).


IV. RECOMMENDATIONS

1. Dismiss the allegation that the Idaho Association of REALTORS® violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2 and send a letter of caution.
2. Dismiss the allegation that Simpson for Congress and T. Layne Van Orden in his official capacity as treasurer violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2 and send a letter of caution.
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letters.
5. Close the file.

4-15-14

Date


Kathleen Guith
Deputy Associate General Counsel
for Enforcement


Mark Shonkwiler
Assistant General Counsel


Kamau Philbert
Attorney

Attachments:
(1) Fundraiser Invitation



Congressman Mike Simpson
and the
Idaho Association of REALTORS®

Invite you to a special visit with:

Speaker John Boehner
U.S. House of Representatives

11:30 am
Monday, August 26, 2013
Boise Centre on the Grove

\$50 per person
Lunch will be served

Reply by Friday, August 23
by email to Kendra@simpsonforcongress.com
or by calling 208-367-1927

Please make checks payable to:
"Simpson for Congress"

Mike
SIMPSON
IDAHO'S CONGRESSMAN

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